

REMARKS

Applicant would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action and amended as necessary to more clearly and particularly describe and claim the subject matter that applicant regards as the invention.

Claim 31 was rejected under 35 U.S.C. §102 as being anticipated by Szapucki et al. (U.S. 5,671,958). For the following reasons, the rejection is respectfully traversed.

Claim 31, amended as suggested by the Examiner, recites a “a protuberance projecting from each of the side walls, each protuberance having a *pointed apex* spaced from the flange” wherein “said pointed apex ends in a *point* or *sharp angle*” (Claim 31, lines 7-9; emphasis added). Szapucki does not disclose this element of the claim.

Szapucki discloses a tab 18 with a curved half-cylinder 66. The half-cylinder is not “pointed”, thus, the claim language is distinct from the disclosure of Szapucki. The Examiner argues that Szapucki might suggest this aspect of the invention at the last three lines of column 4, where Szapucki refers to the dashed line 74 of FIG. 6. However, Szapuck states, in reference to this figure, that the result of line 74 is that height of each cylinder 66 would be tapered (see col. 4, lines 65-67). Thus, the cylinders 66 are still cylinders, and thus still rounded, but are tapered downward. Szapucki does not, therefore, suggest a “pointed apex” with a “sharp point or angle,” but instead discloses a tapered cylinder, which, accordingly, has a rounded edge, not a pointed one. Even if the tapering was done by cutting the cylinder, the end would be rounded, while the rest of the “cut” cylinder would be flattened at the cut. No pointed apex would result, and none is disclosed by the reference. Consequently, claim 31 is patentable over Szapucki.

Likewise, claim 32, which depends on claim 31, is also patentable over the reference.

Claim 33 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lawrence (U.S. 5,669,639) in view of Szapucki et al. (U.S. 5,671,958). For the following reasons, the rejection is respectfully traversed.

Lawrence teaches a window latch mechanism with a first part having exterior side walls (32 and 32A) and a second part having interior side walls (25 and 25A). Lawrence teaches that the height of the exterior side walls must be less than the height of the interior side walls (leaving a gap), so that the latch can be secured in a notch in the window frame (39, 19, and 19A) (see col. 3 line 64 to col. 4 lines 4) such that the exterior side walls fall below the rails (38, 38A) in the window frame (see col. 4, lines 5-9). Lawrence also suggest that the exterior side walls can bulge outward to further secure the latch in the window frame (col. 4, lines 25-34). Thus, Lawrence teaches that the *exterior side walls* are used to secure the device in the window frame.

Accordingly, there is no motivation for one reading Lawrence to add the cylinders 66 of Szapucki. Szapucki teaches that the cylinders 66 are used to secure the Szapucki latch to a window frame (see col. 4 lines 40-55). However, Lawrence already has a means of securing its latch to a window frame. There is, therefore, no benefit to adding the Szapucki cylinders 66 to the Lawrence device. Consequently, there is no motivation found within Lawrence for combining the cylinders 66 of Szapucki with the Lawrence device, because Lawrence already solves the problem of securing the latch to the window frame in a different way. Likewise, no motivation is found outside of Lawrence either, because one skilled in the art, starting with Lawrence, would have no need to add the cylinders 66 of Szapucki, because no benefit is suggested by such any such modification.

The burden is on the Examiner to make a prima facie case of obviousness

(MPEP §2142). To support a prima facie case of obviousness, the Examiner must show that there is some suggestion or motivation to modify the reference (id.). This motivation does not exist when the primary reference already solves the problem that the secondary reference is cited to solve. Thus, there is no motivation to combine the references and claim 33 is patentable over the references.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 29967US1.

Respectfully submitted,
PEARNE & GORDON, LLP

By: 

Robert F. Bodi, Reg. No. 48,540

526 Superior Avenue, East
Suite 1200
Cleveland, Ohio 44114-1484
(216) 579-1700

November 19, 2001